

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

TOM COOPERMAN, *et al.*

Defendants.

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Case No. 4:22-cr-612

The Honorable Andrew S. Hanen

United States' Response to Defendants' Joint Motion to Compel

The United States, by and through its undersigned counsel, respectfully requests that the Court deny Defendants' Joint Motion to Compel for the following reasons (ECF No. 290).

First, Defendants both mischaracterize and omit critical facts in pressing the Court for an unnecessary order to compel. The United States plainly represented to the Court and the parties that it would produce voluntarily the at-issue false statements in this case at one juncture: the disclosure of its expert report, which incorporates those statements. At the time of the April 12, 2023 hearing, that expert report and the corresponding false statements were due on June 5, 2023. That timing and the marriage of the two issues was plainly before the Court, as laid out in the United States' March 31, 2023 disclosure:

[W]e anticipate that the underlying profit calculation for each stock ticker and date range involves (1) **identifying at least one false or misleading statement** by a defendant on Twitter, Atlas Trading Discord or both, similar to the false or misleading statements alleged in paragraphs 1 & 13 of the Superseding Indictment and further specified in paragraphs 21 – 115 as to specific stocks; and (2) aggregating each defendant's profit or loss for that stock ticker during the enumerated date range. **The June 5, 2023 expert disclosure will also detail the false and misleading statements relevant to this calculation.**

Resp. in Opp'n by USA to Mot. for Bill of Particulars and Grand Jury Trs., ECF No. 234, Ex. 2 at 1 (emphasis added).

After the April 12, 2023 hearing, the Court reset the deadline for the United States' expert report to June 15, 2023, presumably so that the United States could respond to any forthcoming motions to dismiss in the interim. *See* Apr. 27, 2023 Order, ECF No. 254 (setting a June 9, 2023 deadline for responses to any motions to dismiss). By resetting the expert disclosure to June 15, 2023, the United States plainly understood that the false-statement identification was similarly reset, as the two issues had always been discussed in unison.

Second, Defendants manufactured claims of prejudice ring hollow. They cannot seriously complain about a delta of ten days when their own litigation strategy in this case belies any suggestion that they are bastions of efficiency. They collectively have drowned the United States and the Court with over 200 pages in various motions filed over several months arguing that the Court should dismiss the Superseding Indictment in whole or part. Each tome is riddled with frivolity and foists duplicative and improper argument upon the Court. As such, a delay of approximately days (which cannot be a genuine surprise given the above-referenced context) is hardly "forcing," ECF No. 290 at 3, Defendants into an untenable position.

Finally, the Court should not extend Defendants' reply deadline. A reply is an opportunity neither to raise new issues nor to litigate the facts, as Defendants seem determined to do in spite of clear Circuit precedent to the contrary. The Court should not indulge Defendants' designs to frolic on inapposite caselaw and detour beyond the allegations in the Superseding Indictment.

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For the foregoing reasons, the Court should deny the Motion.

Dated: June 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2023, I will cause the foregoing motion to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide copies to counsel for all parties.

/s/ Scott Armstrong
Scott Armstrong
U.S. Department of Justice
Criminal Division, Fraud Section